

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,204
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) revoking her license to be a foster home provider. The issue is whether SRS acted within its statutory discretion.

FINDINGS OF FACT

For about two years prior to January, 1992, the petitioner had been providing foster care in her home for a teenage girl and, from time to time, for other foster children placed with her by SRS. In October, 1991, an adult male who had recently been paroled from jail moved into the petitioner's home. The petitioner states she reported to SRS that the man had moved into the home, but she admits she did not tell the Department that he had a criminal record.

When the Department became aware of the situation, it investigated the man's background and discovered that he had been convicted of armed robbery in 1989, that he had a prior record of assaults and drug possession, and that he had a history of and was presently in treatment for substance abuse.

Based on this information, the Department moved the teenage girl who was living with the petitioner to another foster home

and notified the petitioner that it was revoking her foster home license.

The petitioner continues to live with the man in question. Uncontroverted evidence shows that he has been doing well on parole. He is employed and has not used drugs. The evidence also shows that the teenage girl the Department removed from the petitioner's home wishes to return there, and is supported in this wish by her mental health counselor¹ and by her natural mother. Before the events leading to this action, the Department had initiated court proceedings to have the girl permanently placed with the petitioner.

ORDER

The Department's decision is affirmed.

REASONS

The Department of Social and Rehabilitation Services is charged by statute to design programs "to provide substitute care of children only when the family, with the use of available resources, is unable to provide the necessary care and protection to assure the right of any child to sound health and normal physical, mental, spiritual and moral development." 33 V.S.A. § 2591(5). This obligation imposed by statute has been previously described by the board as a "grave and unenviable responsibility" which, in effect, places the Department in an in loco parentis posture. Fair

Hearing Nos. 6506, 8158, and 8688. The Department has further been given considerable discretion by statute to promulgate regulations and to administer licenses governing foster care facilities, including the power to deny or revoke licenses. See 33 V.S.A. §§ 2594, 2595, and 2596.

The Department is specifically authorized "to prescribe standards and conditions to be met" for licensure. 33 V.S.A. § 25596(b)(1). With regard to foster care licensing, the Department has promulgated regulations which set minimum standards which must be met by foster care licensees. Section 103.6 of the Department's foster care regulations provides:

A license may be denied or may be revoked if a member(s) of the household is or has ever been convicted of a criminal offense or if a member(s) of the foster household has chemical or alcohol related problems.

In this case there is no question that the petitioner is in violation of the above regulation. It cannot be concluded either that the above regulation is inconsistent with the above statutes or that the Department has been unfair or inconsistent in applying it in this case. Given the Department's board authority under the statutes (supra) its decision in this case must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

FOOTNOTE

¹The girl's counselor admitted, however, that he had reservations regarding the petitioner's judgement in allowing this man to move into her home.

#